

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WISCONSIN

In Re:

KEVIN L. WULFF,

Debtor.

Case No. 17-31982-bhl
Chapter 12

**CNH INDUSTRIAL CAPITAL AMERICA LLC'S
MOTION TO EXTEND CLAIM FILING DEADLINE**

CNH Industrial Capital America LLC ("CNHi") by its attorneys von Briesen & Roper, s.c., hereby moves (the "Motion") pursuant to Fed. R. Bankr. P. 3002(c)(6) for an extension of the February 26, 2018 proof of claim deadline in this case (the "Claim Deadline"), *nunc pro tunc*, to March 15, 2018. The Affidavit of Russell Gardom is filed in support of this Motion.

In further support of this Motion, CNHi states as follows:

1. Kevin Wulff (the "Debtor") commenced this Chapter 12 case on December 18, 2017 (the "Petition Date"). As of the Petition Date, the Debtor was indebted to CNHi under two (2) secured equipment accounts pursuant to a Retail Installment Sale Contract and Security Agreement dated as of January 20, 2016 for the purchase of an Killbros Grain Cart, Model 1800, and a Retail Installment Sale Contract and Security Agreement dated as of February 6, 2015 for the purchase of an ACGO Tractor, Model 6215. (Gardom Aff. ¶ 3, Ex. A and B; *see also* the Debtor's Schedule D, Section 2.4 – 2.5 [Dkt. 9] and confirmed Chapter 12 plan [Dkt. 62, Section 3.5].)

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2. The address for CNHi that the Debtor used for his list of creditors is 100 Brubaker Avenue, New Holland, PA 17557. (Dkt. 1, p. 8.) CNHi does not receive mail or legal notices at this address, which was a physical office address but not a mailing address. (Gardom Aff. ¶ 4.) Therefore, CNHi did not receive the Notice of Chapter 12 Bankruptcy Case (Dkt. 3; the “Filing Notice”) that was sent out by the Bankruptcy Notification Center (“BNC”) on December 20, 2017. The Filing Notice contains the Claims Deadline.

3. The BNC’s Certificate of Notice filed on December 20, 2017 (Dkt. 6) identifies CNHi under a “BYPASSED RECIPIENTS” heading and indicates that the Brubaker address was “identified by the USPS National Change of Address System as undeliverable.” As a result, according to the BNC, notices from this case “will no longer be delivered by the USPS to these addresses; therefore, they have been bypassed” after December 20, 2017.

4. CNHi first learned of this bankruptcy case on or about March 15, 2018 and immediately filed two (2) secured proofs of claim (Claim 4 and Claim 5; collectively, the “CNHi Claims”) on March 15, 2018. (Gardom Aff. ¶ 5, Ex. A and B.) The Debtor’s first Chapter 12 plan was filed on March 19, 2018 and included treatment of the CNHi Claims (Dkt. 25, Section 3.5) and the Debtor agreed to pay the CNHi Claims in his third amended plan, which was confirmed. (Dkt. 62; Section 3.5 Dkt. 81.)

5. CNHi did not receive the Filing Notice and did not otherwise know about this bankruptcy case until after Claim Deadline had passed because the Filing Notice was sent to the wrong address. (Gardom Aff. ¶¶ 4-5.) CNHi took prompt action to file the CNHi Claims after first learning about this case. The Debtor confirmed a 100% plan which included payment to CNHi on the CNHi Claims, so there would be no detriment to any creditors if the CNHi Claims are allowed. CNHi, like the similarly situated creditor in *In re Washington*, 1) did not receive

notice of this case until after the Claim Deadline expired; 2) upon learning of this case, promptly filed the CNHi Claims; and 3) the prejudice to CNHI of disallowing the claim outweighs the prejudice to the other creditors of allowing the claim. 483 B.R. 871, 877 (E.D. Wis. Bankr. 2012).

6. Therefore, CNHi respectfully moves for an order extending the Claim Deadline, *nunc pro tunc*, to March 15, 2018, and for such other relief in favor of CNHi as may be warranted in this case.

DATED this 28th day of September, 2018.

VON BRIESEN & ROPER, S.C.

By: _____ /s/
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